

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**SAMUEL F. STEARNS, and
KATHLEEN L. STEARNS,**

Debtors.

Case No. **05-65451-13**

MEMORANDUM OF DECISION

At Butte in said District this 23rd day of February, 2006.

In this Chapter 13 case the Trustee, Robert G. Drummond, of Great Falls, Montana, filed on February 21, 2006, objections to confirmation of Debtors' Chapter 13 Plan and a Report stating that Debtors have failed to fulfill their duties under 11 U.S.C. § 521(a)(1)(B)(iv) by failing to file copies of all payment advices or other evidence of payment received by the Debtors within 60 days before the date of the filing of the petition as added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). The Trustee requests in his objection that the case be dismissed. Debtors are represented by R. Clifton Caughron, of Helena, Montana. This is a case of first impression construing new provisions added by BAPCPA – § 521(a)(1)(B)(iv) and § 521(i).

Section 521(a)(1)(B)(iv) states that the “debtor shall file – (iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor”. Debtors’ Schedule I shows that both Debtors are employed – by Tyler & Hoening Motors and Beaverhead County, respectively. Review of the case docket confirms the Trustee’s contention that Debtors have failed to file payment advices or other evidence of payment from their employers.

The Debtors’ voluntary Chapter 13 petition was filed on December 30, 2005, and 45 days has elapsed since the petition date. Section 521(i)(1) provides that, unless the debtor requests an extension before the 45 day period elapses or the court finds on motion of the trustee that the debtor attempted in good faith to file all the information required under § 521(a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case, if a debtor under Chapter 7 or 13 fails to file “all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.”¹ 11 U.S.C. §521(i)(1). The Court concludes by the plain meaning of the provision that § 521(i)(1) is subject to § 521(i)(2). Consequently, when a party in interest makes a request for dismissal for Debtor’s failure to file the information required under § 521(a)(1), the provisions of § 521(i)(1) become effective and

¹Subsection 521(i)(1) is subject to paragraph 521(i)(2) (“Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request”) and 521(i)(4) (“Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case”).

dismissal is effective as of the 46th day after the date of the filing of the petition. The Trustee has requested an order dismissing the case as provided under § 521(i)(2) in his objection to confirmation.

The Court informed practitioners appearing at this Court's January 2006, hearings scheduled in Butte, Missoula, Billings and Great Falls, that they should review the requirements of § 521(a)(1) as impacted by § 521(i). The attorney for Debtors was present during the January hearings conducted in Butte when the Court discussed these statutory provisions.

Based upon the Debtors' failure to file payment advices or other evidence of payment, by operation of § 521(i)(1), and after a request has been made by a party in interest pursuant to §521(i)(2) this case is automatically dismissed effective on the 46th day, February 14, 2006.

IT IS ORDERED that a separate order will be issues providing that the Chapter 13 Trustee's request to dismiss, filed February 18, 2006, is granted, and this case is **DISMISSED** pursuant to §§ 521(i)(1) and (2) for the Debtors' failure to file the information required under § 521(a)(1)(B)(iv), effective February 14, 2006; and the confirmation hearing scheduled for March 7, 2006, at 9:00 a.m. in Butte, Montana is vacated.

BY THE COURT



HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana